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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Joint report of the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolutions 1994/37 and 1994/82

Visit by the Special Rapporteurs to the Republic of Colombia from 17 to 26 October 1994

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CONTENTS

		Paragraphs	Page
Introduction		1 - 8	3
I.	BACKGROUND AND CONTEXT: DEVELOPMENTS SINCE 1990	9 - 19	4
II.	THE RIGHT TO LIFE AND FREEDOM FROM TORTURE: FINDINGS AND CONCERNS	20 - 54	7
	A. Violations of the right to life and freedom from torture in areas of armed conflict	24 - 40	9
	B. Violent action against political dissent and social protest	41 - 47	13
	C. "Social cleansing"	48 - 50	16
	D. Other factors of violence	51 - 54	16
III.	AREAS VISITED BY THE SPECIAL RAPPORTEURS	55 - 74	17
	A. Arauca	56 - 60	17
	B. Magdalena Medio	61 - 67	20
	C. Valle del Cauca	68 - 74	21
IV.	THE RIGHT TO DUE PROCESS OF LAW	75 - 102	23
	A. Institutions	75 - 76	23
	B. Problems relating to the functioning of institutions with jurisdiction to impose penalties	77 - 102	25
V.	CONCLUSIONS	103 - 114	31
VI.	RECOMMENDATIONS	115 - 132	34

Introduction

1. On 29 July 1993, the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, sent a letter to the Government of Colombia in which he expressed concern at persistent allegations of violations of the right to life in that country and reports according to which the recommendations formulated by his predecessor, Mr. S. Amos Wako, after his visit to Colombia in 1989, had not been implemented. The Special Rapporteur inquired whether the Government would consider inviting him to carry out a second visit to Colombia, with the purpose of examining the evolution of the situation since 1989 and following up on the recommendations formulated by Mr. Wako. In a letter dated 22 September 1993, the Special Rapporteur reiterated his interest in carrying out a visit to Colombia, and on 4 February 1994 the Government extended the corresponding invitation.

2. The Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, also expressed concern, in a letter transmitted to the Government on 29 March 1994, at allegations received in the framework of his mandate. In the same letter, he inquired whether the Government would invite him to undertake a visit to the country. An invitation was subsequently extended to him by note verbale dated 18 May 1994.

3. In a letter dated 24 August 1994, the Special Rapporteur on extrajudicial, summary or arbitrary executions suggested to the Government of Colombia that his visit take place from 17 to 26 October 1994 and proposed that it be carried out jointly with the Special Rapporteur on the question of torture, as both Special Rapporteurs felt that the assessment of the situation and the analysis of questions relating to the protection of the right to life and the right to physical integrity would benefit from cooperation between the two Rapporteurs. In a letter dated 12 September 1994, the Government expressed its agreement to a joint mission at the dates suggested by Mr. Ndiaye.

4. The Special Rapporteurs spent eight days in Bogota, during which time they met the following government representatives: the President of the Republic; the Ministers for Foreign Affairs, Justice, Defence and the Interior (Ministro de Gobierno); the Procurador General de la Nación and the Procuradores Delegados for Human Rights, the Armed Forces and the Vigilancia Judicial; the Fiscal General de la Nación and his deputies; the Defensor del Pueblo and his Director de Quejas; the High Command of the Colombian security forces; the Presidential Adviser for Human Rights; the High Commissioner for Peace; the President of the Supreme Court; officials of the Departamento Administrativo de Seguridad (DAS); and the Director of the Instituto Nacional Penitenciatio y Carcelario (INPEC).

5. Most meetings in Bogota were held jointly by both Special Rapporteurs. In the interest of using the short time available in the most efficient way, the Special Rapporteurs conducted separate visits outside the Capital District of Bogota. Thus, on 19 October 1994, the Special Rapporteur on the question of torture visited Barrancabermeja, while the Special Rapporteur on extrajudicial, summary or arbitrary executions travelled to Arauca on 19 and 20 October 1994 and to Cali on 23 and 24 October 1994. During these visits, the Special Rapporteurs met with the governors or their representatives of the

departments of Norte de Santander, Arauca and Valle del Cauca, the regional representatives of the Procuraduría, the Fiscalía and the Defensoría del Pueblo, the local military and police commanders, as well as the mayors of the cities of Barrancabermeja, Arauca and Cali. In addition, the Special Rapporteur on torture visited several prisons in Bogota and Barrancabermeja with the main purpose of meeting prisoners whose cases had been forwarded to him in the context of his mandate. He met, in particular, two prisoners who had been kept in isolation in military barracks for several months, and appealed later to the authorities to put an end to that situation. By letter dated 21 November 1994, the Government informed the Special Rapporteur that both prisoners had been transferred to civilian prisons.

6. During their visit, the Special Rapporteurs also met with representatives of a wide range of non-governmental organizations active in the field of human rights, representatives of political opposition parties and trade unions, as well as persons testifying in their personal capacity, not only from the cities visited but also from other departments of Colombia, such as Antioquia, Meta, Putumayo, Cauca, Valle del Cauca and from the region of Magdalena Medio.

7. The Special Rapporteurs wish to thank the Government of Colombia for the invitation and for the assistance provided during the mission. The frankness with which the representatives of the different State authorities provided them with information was highly appreciated. The Special Rapporteurs would also like to thank all non-governmental organizations and other groups that provided them with information and, in particular, those who presented their personal testimony to them. Particular thanks are extended to the United Nations Development Programme and the Andean Commission of Jurists - Colombian Section, which provided invaluable assistance in coordinating the programme of meetings during the mission.

8. The present report contains in chapter I a short reference to previous visits to Colombia carried out in the framework of thematic mandates of the Commission on Human Rights, as well as an overview of the developments since 1990 affecting the right to life and physical integrity in the country. In chapter II, the Special Rapporteurs present principal issues of concern to their respective mandates, as identified on the basis of documentation received and of the information gathered during the mission. Chapter III illustrates these concerns through an analysis of the situation and interaction of factors in three areas visited by the Special Rapporteurs during their visit. In chapter IV, the Special Rapporteurs examine problems related to the functioning of the administration of justice. Lastly, chapter V contains the conclusions drawn by the Special Rapporteurs and their recommendations for possible ways of improving respect for the right to life and physical integrity.

I. BACKGROUND AND CONTEXT: DEVELOPMENTS SINCE 1990

9. Between 1987 and 1989 three different mechanisms of the Commission on Human Rights visited Colombia and reported their findings: the Special Rapporteur on the question of torture 1/, the Working Group on Enforced or Involuntary Disappearances 2/ and the Special Rapporteur on summary or arbitrary executions. They all focused inter alia on the context of violence

in which human rights violations occurred, as well as on the legal and institutional background and addressed specific recommendations to the Government.

10. The visit by the then Special Rapporteur on summary or arbitrary executions, Mr. Amos Wako, took place in October 1989. He submitted a report on that visit to the Commission on Human Rights at its forty-sixth session (E/CN.4/1990/22/Add.1), which contained an analysis of violations of the right to life in the context of the violence then prevailing, statistical information received, a description of specific massacres, those sectors of the population that were particularly vulnerable, the Government's counter-insurgency campaign and its repercussions on the civilian population, an assessment of action taken by the Government, as well as conclusions and recommendations focusing on the following areas of principal concern: violations of the right to life by paramilitary groups operating in close cooperation with the armed forces and the police; the impunity of members of paramilitary groups and security forces responsible for such violations, as well as grave shortcomings within the administration of justice which contributed to the phenomenon of impunity; and social injustice particularly affecting peasants and workers (E/CN.4/1990/22/Add.1, paras. 60-74). A number of significant developments have taken place since then.

11. Under the administration of President Gaviria (1990-1994), peace agreements were concluded with four armed insurgent movements comprising approximately 3,500 combatants. Thus, in 1990 and 1991, the M-19 Movement, a faction of the Ejército Popular de Liberación (EPL) (Popular Liberation Army) which turned into the political movement Esperanza, Paz y Libertad (Hope, Peace and Freedom), the Partido Revolucionario de Trabajadores (PRT) (Revolutionary Workers' Party) and the Quintín Lamé group, laid down their arms and formed the political movement Alianza Democrática/M-19 (Democratic Alliance/M-19). On 9 April 1994, a peace agreement was concluded with the Corriente de Renovación Socialista, a dissident faction of the Ejército de Liberación Nacional (ELN) (National Liberation Army). However, negotiations with the Coordinadora guerrillera "Simón Bolívar" composed of the Fuerzas Armadas Revolucionarias de Colombia (FARC) (Revolutionary Armed Forces of Colombia), the ELN and the EPL, broke down in 1992, leading to renewed violence. Furthermore, attempts at the reinsertion into civilian life of ex-combatants eligible for amnesty under the terms of these agreements have not always been successful: thus, a group of former combatants of the demobilized M-19 have reportedly reunited in 1994 and formed the Comando Jaime Cañón.

12. In response to the continuing problem of violence in Colombia, President Gaviria's National Strategy against Violence, first formulated in 1991, emphasized the use of force for the repression of violence directed against the State. A number of measures, such as the establishment of internal control mechanisms within State institutions and the strengthening of the Regional Justice system (see paras. 13 and 14 below) should counter human rights violations by members of the security forces. In this connection, chapter II below examines the impact of the continued armed conflict between the insurgents and the security forces on the situation of human rights and its particularly negative effect on the civilian population.

13. The years following Mr. Wako's visit saw a number of legislative initiatives relating to human rights issues in Colombia. In 1991, a new Constitution came into force which contains a catalogue of fundamental rights and freedoms, as well as procedures for their protection, such as the writ of protection, or the establishment of the institution of the Fiscalía and the Defensoría del Pueblo. Further legislative initiatives dealt with judicial procedures and, in particular, introduced reforms in the institution of the Regional Justice.

14. Law No. 81 of 1993 contained a reform of the Code of Criminal Procedure, inter alia allowing lawyers, in procedures before the Regional Justice, to interrogate secret witnesses, even though their identity remained unknown, and revoking the decree that had prohibited the distribution of judicial files to defence lawyers. During 1993, the Constitutional Court issued a number of decisions by which it declared inexequibles several decrees limiting rights and guarantees in proceedings before the Regional Justice system. For example, the writ of habeas corpus was reinstated in such proceedings and the decree that permitted convictions to be founded on declarations of secret witnesses was revoked. Law No. 104 of 1993 amplified the scope of the witness protection programme and provided for guarantees for those movements of social and popular protest acting within the Constitution and the law. Decree No. 2535/1993, issued pursuant to Law No. 61 of 1993, modified the norms governing the carrying, holding, purchase and sale of firearms, as well as their registration, promoting the disarmament of the civilian population. Furthermore, Laws No. 30 of 1993 and 107 of 1994 enhanced human rights education.

15. Control mechanisms and human rights institutions were set up within the security forces. For instance, a human rights unit was established in 1992 within the General Command of the Armed Forces and, in 1994, within the Ministry for Defence. Law No. 62 of 1993 provided for a restructuration of the National Police, stipulating that human rights protection was essential to the mission of the police as an institution and that human rights issues were a central feature in the education of all police agents. Law No. 62 also created the position of a Comisionado Nacional para la Policía, who would coordinate the mechanisms of internal disciplinary control, to which a civilian was appointed. Non-governmental sources, however, drew the Special Rapporteurs' attention to statements made by the first appointee to this post according to which he had seen his work restricted by resistance coming from high-level police officials. On 9 September 1993, a special human rights unit was created within the Departamento Administrativo de Seguridad.

16. On 17 August 1993, the Minister for Defence issued Directive No. 0017 obliging all members of the fuerza pública to respect the norms of international humanitarian law contained in the four Geneva Conventions of 1949 and the Protocols additional thereto. On 6 September 1993, the Command of the Military Forces issued Directives Nos. 100-5 and 100-6 concerning, respectively, strict respect for international humanitarian law and the strengthening of programmes aiming at respect for human rights by all members of the military forces. A draft bill proposing adherence to Protocol II additional to the Geneva Conventions of 1949 was approved by the Senate in September 1994.

17. On 7 August 1994, the newly elected President Ernesto Samper Pizano took office. In his inauguration speech, President Samper acknowledged that Colombia was facing a human rights problem and identified the question of impunity and so-called paramilitarism 3/ as main causes for persistent human rights violations. He also avowed his Government's commitment to finding solutions to the human rights crisis. In an address delivered on 9 September 1994, the Colombian Human Rights Day, the President presented the measures his Government intended to adopt to fight impunity, provide better protection and defence of human rights, eradicate paramilitarism, deal with the problem of displacement because of political violence, propagate human rights education and improve the security situation in Colombia. With a view to consolidating peace, President Samper appointed a High Commissioner for Peace with the mandate to explore possibilities and formulate proposals for a negotiated solution of the armed conflict in Colombia.

18. Despite these steps and declarations, the level of violence referred to in the reports of the above-mentioned mechanisms of the Commission on Human Rights has not decreased. Mr. Wako's comments of 1990, for instance, are still pertinent in 1994:

> "It is by no means an easy matter to account for the complex problem of violence and its causes and forms. The complexity of the problem is explained by a large number of factors, such as the variety of conflicts it covers and therefore the multiplicity of persons involved, the diversity of patterns of violence and behaviour, regional differences that make any generalization difficult, and the constant volatility of the political and military alliances among the various persons responsible for acts of violence." 4/

19. The ongoing armed conflict, the continuing existence of paramilitary groups, urban violence, in particular directed against marginalized sectors of the population, the phenomenon of drug-trafficking and the defence of economic interests stemming from the exploitation of natural resources, such as oil, gold, coal, emeralds, etc., continue to give rise to multiple forms of violence.

II. THE RIGHT TO LIFE AND FREEDOM FROM TORTURE: FINDINGS AND CONCERNS

20. Colombia, a country of 1,200,000 km^2 and 36 million inhabitants, has one of the world's highest record of homicides: according to official figures, during the past 15 years, figures increased from approximately 10,000 homicides in 1980 to 20,000 in 1988, and came close to an estimated 30,000 in 1994. According to data published by Justicia y Paz, during the administration of President César Gaviria, between June 1990 and June 1994, a total of 9,497 persons were killed for political or ideological motives: 3,202 were said to have lost their lives in political killings, 4,971 in presumably political killings and 1,324 fell victims to "social cleansing". A further 5,358 are reported to have died during armed confrontations during the same period, including civilians (438), State agents (1,478) and persons presumed to be combatants (3,442). For the period from July 1993 to June 1994, more than 4,000 people were said to have been killed for political or ideological motives. This means an average of 10 victims of violence

per day: six as victims of political killings, one in the context of "social cleansing" and three in armed confrontations. Between January 1993 and March 1994, members of the State security forces (50.28 per cent) and paramilitary groups (18.98 per cent) together were imputed to have committed almost 70 per cent of alleged extrajudicial, summary or arbitrary executions. Guerrilla groups (24.79 per cent) and militias (4.57 per cent) 5/ were said to account for the remaining 30 per cent. However, in approximately 77 per cent of all cases, the authorship of violations of the right to life could not be ascertained. For the same period, Justicia y Paz recorded 436 cases of torture 6/. Furthermore, one person is said to disappear every day, leading to a total of 700 cases of disappearances reported by Justicia y Paz for the period between June 1990 and June 1994. In many cases, the victims are reportedly found dead a few days after their disappearance. The Working Group on Enforced or Involuntary Disappearances currently has 717 cases of unresolved disappearances in Colombia on its books. 7/

21. In its most recent annual report, dated July 1994, the Procuraduría General de la Nación presented an overview of the complaints received during 1993. With respect to violations of the right to life and physical integrity allegedly carried out by security forces, the Procuraduría noted with alarm an increase by 23 per cent and 18 per cent, respectively, compared with complaints received in 1992. Concern is also expressed at a tendency witnessed between 1990 and 1993 whereby torture and homicides constitute an increasingly large proportion of the complaints received: while in 1990 the ratio between abuses considered by the Procuraduría as "violaciones leves", such as arbitrary detention, illegal break-ins, threats, ill-treatment, etc., and torture/homicides was four to one, in 1993 it had become practically equal. In the majority of complaints presented to the Procuraduría, responsibility is attributed to members of the National Police (45 per cent) and of the military forces (30 per cent).

22. Both Special Rapporteurs have, over the past years, received numerous reports and allegations referring to cases of extrajudicial, summary or arbitrary executions and torture, as well as documents containing an analysis of the political, social and economic context in which such violations were taking place in Colombia in virtually absolute impunity. Both Special Rapporteurs have transmitted their concerns to the Government of Colombia in numerous urgent appeals and to the international community in their reports to the Commission on Human Rights. 8/

23. During the visit of the Special Rapporteurs, all interlocutors stressed the need to take decisive and urgent steps to redress the situation of violence, the gravity of which is illustrated by the above figures. This violence finds its expression in human rights violations, including extrajudicial, summary or arbitrary executions and torture, by security forces and groups cooperating with them, particularly in the context of counter-insurgency activities, but also with a view to protecting particular economic privileges and interests; violent repression of those voicing political dissent and social protest; and elimination of persons regarded as undesirable in Colombian society. Large-scale and grave abuses by armed insurgents and armed groups at the service of drug traffickers or large landowners, as well as the extremely high levels of common criminality, add to the climate prevailing in Colombia. Land conflicts, particularly in areas

with an indigenous population, the proliferation of arms, the absence of an effective civilian administration in many areas of the country, some of which suffer from economic backwardness, are also important factors to be taken into account. In addition, the absence of a functioning justice system with its result, impunity, not only impedes bringing the situation under control by punishing those responsible for the abuses but constitutes in itself an important source of violence. The following sections deal with these issues, identified as the main problems affecting the right to life and physical integrity in Colombia.

A. Violations of the right to life and freedom from torture in areas of armed conflict

24. Areas of armed conflict continue to be the scenario of large-scale human rights violations and abuses by members of the security forces, paramilitary or "private justice" groups often said to cooperate with them, and the armed insurgent groups. The Special Rapporteurs were informed that, at present, approximately 16,000 guerrillas of the FARC, the ELN and the dissident faction of the EPL still in arms, were active on more than 60 "fronts" in different regions of the country. Armed confrontations are said to be particularly frequent in the departments of Antioquia, Santander, Norte de Santander, César, Bolívar and Meta. In these areas, the armed forces allegedly continue to apply a counterinsurgency strategy based on the concept of "national security", whereby everybody who is known or suspected to be linked with the guerrillas is regarded as an internal enemy. According to the information received, in the areas labelled as "zonas rojas" 9/ (red zones), where the insurgents are active and armed confrontations take place, the security forces view virtually all civilians as collaborators of the subversion, an allegation which was denied by the members of the armed forces met by the Special Rapporteurs. 10/

25. The category "internal enemy", applied to everyone who is regarded as supporting the guerrilla in one way or another (even if the insurgents use force to obtain, for example, food or money from civilians), is allegedly extended to all those who express dissatisfaction with the political, economic and social situation, particularly in the rural areas. Consequently, leaders and members of trade unions, political opposition parties, human rights organizations, social workers, etc., have been, alongside with peasants, the main victims of human rights violations in areas where there is armed conflict. Similarly, a large number of those who dared to denounce human rights abuses by the security forces have been killed or forced to leave their areas of residence. As a result, witnesses of human rights violations fear for their lives and in many cases prefer to remain silent.

26. Military operations leading to the death of civilians include indiscriminate bombing of civilian settlements and armed incursions into villages during which the victims are said to be killed on the spot or abducted, either to extract information or to use them as guides and for intelligence purposes. Often, the civilians killed during such operations are later presented to the public as guerrillas who died in combat, their corpses being dressed by the soldiers in military clothes, and guns and grenades placed into their hands. The Special Rapporteurs were told that the aim of

this strategy is to deprive the guerrillas of their basis. In the words of one non-governmental observer, it consists in "fighting the insurgents by fighting the civilian population".

27. This concern is shared by the Procuraduría General de la Nación in its third report on human rights, according to which the doctrine of "national security" applied in several Central American States with the effect of converting the civilian society, which should be the principal ally of their defence and security organs, into their most powerful enemy was not an effective strategy and by no means an example to be imitated. 11/ For the Procuraduría, the methods applied by each party to the armed conflict, and particularly the extent to which these methods respect individual and collective human rights, constitute an important element with regard to the legitimacy of their actions.

28. In this strategy, torture appears to be used with two principal aims: to obtain information on guerrilla groups and to spread terror among the population. Torture, inflicted at the place of detention, in remote places in rural areas or on military and police premises, reportedly precedes the taking of a decision as to whether the detainee is released or put at the disposal of the competent judicial authority. According to the Code of Criminal Procedure, detentions can only be carried out when the person is caught in flagrante or with a written legal order issued and signed by a competent judicial authority and motivated by a previously defined legal offence. The detainees have to be brought before the judicial authorities within 36 hours following the arrest (arts. 370-372). It seems to be a common practice, however, that members of the armed and security forces arrest persons without a warrant, subject them to interrogation and take them to the judge only a few days later, after forcing them to sign a record of good treatment. All these circumstances, together with the fact that the detainees are kept incommunicado, increase the risk of torture. It is also frequent that the date of arrest appearing in the military or police records does not coincide with the date on which the person was actually arrested. In addition, the detainees are usually not examined by a doctor when taken to the detention centre; as a result, once they are released or put at the disposal of the judicial authorities those responsible for the arrest allege that the marks on their bodies are previous to the arrest.

29. On the other hand, torture and ill-treatment often take place in the context of other human rights violations, in particular summary executions or disappearances, and therefore they are very often not even registered as torture cases. In many cases also, the victims, once released, prefer not to file complaints or inform the competent authorities for fear of reprisals (they are often warned not to denounce the abuses they were subjected to) or simply because they consider themselves fortunate to be alive and free. If they are formally charged, confessions obtained under torture are very often considered as evidence by judicial organs.

30. A report prepared by several non-governmental organizations based on the study of 183 cases of detention that occurred in the Barrancabermeja area indicates that 93 per cent of the individuals concerned (i.e. 170) were subjected to physical and/or psychological torture. It says that 143 were subjected to physical torture; all were severely beaten and a significant

percentage suffered other kinds of physical torture, such as being held under water, electric shocks, burning with acid, asphyxia caused by plastic bags being secured over the head, etc.; 136 were verbally abused and/or threatened with death, disappearance or other violations. 12/ The report also indicates that out of the 170, 97 persons reported the abuses they were victims of to some judicial authority or government control organism; 32 of them informed the Fiscalía in Barrancabermeja, but there is no evidence that this office has initiated any criminal investigation; 62 cases were reported to the Procuraduría, but only four resulted in the opening of a formal disciplinary investigation. 13/ The report also points out that the subjective responsibility of government agents in acts of torture is sometimes impossible to establish because they take part in torture sessions hooded or after placing hoods on their victims, or because they use methods which leave no marks on the body. On the other hand, there is no independent forensic body which could carry out investigations and collect evidence. 14/ The report further states that normally, if there are medical opinions verifying torture, a disciplinary investigation is begun by the office of the Provincial Procuraduría in Barrancabermeja and, because of the nature of the act in question, the case is referred to the Delegate for Human Rights. Many of these investigations do not result in sanctions of the individuals responsible because in the majority of cases it is impossible to individualize responsibility - it is clear that torture was carried out and that the army was responsible, but which individual members of the army were responsible cannot be determined. 15/ According to the Procurador Delegado for human rights, a situation similar to that described in this report seems to prevail also in the departments of Arauca, Santander, Norte de Santander and in the south of César.

31. Information received from non-governmental sources registered, for the period between January 1993 and March 1994, 654 executions preceded by torture. The corpses of the victims reportedly bore signs of different forms of torture: some were burnt, others presented injuries caused by acids or were mutilated. Women were frequently raped. In 20 per cent of these cases those responsible were identified as members of the armed forces (45 per cent), paramilitary forces (30 per cent) and guerrilla groups (9 per cent).

32. The reports received by the Special Rapporteurs clearly indicate that neither the security forces nor the armed insurgent groups show respect for the right to life and physical integrity in areas of armed conflict. On the contrary, the Special Rapporteurs received numerous reports about human rights violations by various military battalions and other units of the security forces based in zonas rojas. However, particular concern was expressed at the activities of the brigadas móviles (mobile brigades), established in the recent past. For example, Mobile Brigade No. 1 has been operating in the department of Meta and neighbouring Casanare and Boyacá since 1991, whereas Mobile Brigade No. 2 was established in 1993 in the Magdalena Medio region. These brigades are reported to patrol the country during extended periods, without having a permanent base, and the battalions which normally operate in the region do not consider themselves responsible for their activities. Members of mobile brigades are said to be accountable for a high number of enforced disappearances, torture and extrajudicial, summary or arbitrary executions. During their operations, mobile brigades reportedly do not wear

identification badges or insignia, making it almost impossible for the victims of, or witnesses to, such abuses to identify those responsible. This practice was noted with concern by the Procuraduría in its already mentioned report. 16/

33. The Special Rapporteurs also received numerous reports concerning abuses against the civilian population committed by members of the different armed insurgent groups. Peasants are said to be forced to provide the guerrilla with food and money. If they refuse to fulfil these demands, they are regarded by the guerrilla as collaborators of the security forces and killed. They may also be forced under threats to leave the area. It was also reported that members of the security forces captured in combat are very often executed. Moreover, former combatants who have sought reinsertion into civilian life have reportedly been targeted by their former comrades in arms. The guerrilla groups themselves frequently acknowledge such killings, known as "ajusticiamientos", and publicize them, apparently with a "deterrent purpose".

34. The case of Urabá is particularly dramatic. In this region, members of the dissident faction of the EPL and of the FARC were said to have killed former EPL members who had laid down their arms under the 1991 peace agreement with the Government, as well as trade union leaders and activists of Esperanza, Paz y Libertad. This, in turn, was said to have provoked reprisal killings by members of the latter. During 1993, more than 100 persons were said to have lost their lives in this conflict. In addition, the armed insurgent groups continue to use terrorism and resort to kidnapping in order to obtain money to finance their activities and, to a lesser extent, for political reasons.

35. In certain areas, the guerrilla groups are said to have replaced the State administration and exercise complete control. This is viewed as a complicating factor in peace negotiations with the remaining active guerrilla groups: the question is no longer that of convincing them just to hand in their arms and halt the fighting, but to give up, in addition to lucrative sources of income, power and control over these areas.

36. More than 130 paramilitary groups, referred to by some as "private justice" groups, continue to operate throughout Colombia, even though the legal basis for civilian armed groups, Law No. 48 of 1968, was revoked by Decree No. 815 of 1988. 17/ The first such groups were said to have been established by large landholders to defend themselves against the economic exigencies of the guerrilla and to protect their economically and socially predominant positions. They operate mainly in the following areas: in the north of Antioquia and Córdoba; the Magdalena Medio; the department of Meta and neighbouring regions of Casanare and Boyacá; Valle del Cauca. They are also present, although in a more limited way, in the departments of Putumayo, Arauca and in the south of César.

37. According to the information received, there have never been serious attempts on the part of the security forces to restrain the activities of such groups or to dismantle and disarm them. On the contrary, the military began to cooperate with self-defence groups, considering them as useful allies in the common interest of fighting the armed insurgency. In some regions, such as the Magdalena Medio, armed groups were said to have been trained in

military establishments and are operating under the direct command of the armed forces. The Special Rapporteurs were told, however, by members of the High Military Command that their policy was to combat these groups and that instructions had been given to that effect; this policy had produced very positive results, to the point that these groups had been almost dismantled.

38. With the increasing influence of drug trafficking during the 1980s, drug traffickers started to use paramilitary groups to protect their laboratories and other installations used for the processing of cocaine, as well as for the purpose of territorial control. In some departments such as Antioquia, Córdoba, Meta, Casanare, Boyacá and Valle del Cauca, such groups are in the service of drug cartels or individual drug traffickers, who are reported to have close links with the local military commanders. Operations against civilian settlements in these areas are often said to be carried out jointly by security forces and paramilitary groups. Thanks to the enormous financial resources at the disposal of drug cartels and individual drug traffickers, their private armed groups have been converted into highly operational forces equipped with sophisticated weapons. Contrary to former years, when paramilitary groups seemed to be relatively confined in their area of activities, newly emerged groups such as "Colombia sin guerrilla" (COLSINGUE, Colombia without guerrilla war) or "Muerte a comunistas y guerrilleros" (MACOGUER, Death to Communists and guerrillas) are reportedly active throughout the national territory.

39. In his speech on the occasion of the Colombian Human Rights Day on 9 September 1994, President Samper recognized that paramilitarism, particularly through its link with drug trafficking, was one of the causes of human rights violations in Colombia and announced a strategy to implement Decrees No. 813, 814 and 815 of 1988 (see para. 36 above and note 17/) inter alia, by supporting the Fiscalía General de la Nación through the establishment of special investigative units and by subjecting members of self-defence and private justice groups to justice.

40. Whatever the alliances in areas where armed insurgents are present, between the security forces, the drug traffickers and the paramilitary groups, the main victim is the civilian population which is caught between two, sometimes three, fires. Often, forced displacement appears to be the lesser evil, 18/ weighed against the risk of enforced disappearance, torture and extrajudicial killings at the hands of any of the above actors.

B. Violent action against political dissent and social protest

41. Along with the civilian population caught between the security forces, paramilitary groups, guerrillas and drug traffickers, associations and individuals who have expressed criticism of the political, economic and social situation have been victims of numerous human rights violations in Colombia throughout recent decades. Political dissent and social protest have been considered by traditionally dominant sectors and drug traffickers as a threat to their interests, and are perceived as subversive activities not only by the military involved in counterinsurgency operations in rural areas but also by certain representatives of civilian authorities and institutions. Labelled as front organizations of the guerrillas, and thus regarded as internal enemies, human rights activists, lawyers, particularly those working

with victims of human rights violations, trade unionists, members of political opposition parties, social workers, etc., live under permanent threat - conveyed over the telephone or in writing 19/ - and are often forced to leave their areas of work and residence. The alarming number of killings of these activists over the years and in the recent past make these threats real. The following paragraphs containing some examples illustrate the gravity of the phenomenon.

42. Reports of human rights violations, including killings and death threats, have been received by the Special Rapporteur on extrajudicial, summary or arbitrary executions on a regular basis. Over the past three years, he has sent numerous urgent appeals to the Government of Colombia urging the authorities to ensure the protection of human rights activists. During the mission, too, the Special Rapporteurs were informed by almost all the representatives of non-governmental organizations they met, but also by persons holding the positions of personeros in different municipalities throughout the country, that they are living and working under virtually permanent threat, some of them having themselves suffered attempts against their lives. Those responsible for attacks and threats against human rights activists reportedly include members of the military, the police, the DAS, and paramilitary groups reportedly cooperating with them or depending on drug traffickers. During their meetings with the Special Rapporteurs in Barrancabermeja and Arauca, the military commanders of these areas made it very clear that they regarded human rights groups as front organizations of the armed insurgents, whose aim is to denigrate the image of the armed institution through calumny and propaganda. The General Commander of the Armed Forces stressed nevertheless that the functions entrusted to the Armed Forces were very clearly defined and carried out regardless of any ideological considerations. There was therefore no reason for them to confront any political or union leader.

43. Similarly, members of trade unions have suffered numerous violations of their right to life and physical integrity. Representatives of the Central Unitaria de Trabajadores (CUT) informed the Special Rapporteurs that, since its establishment in 1986 as an umbrella organization comprising a wide range of trade unions of different sectors and political orientations, more than 1,700 of its members have been killed and many more have received threats or been the subject of attacks. Responsibility for violence against trade unionists was attributed partly to the military and police or paramilitary groups said to cooperate with them or enjoy their acquiescence, who perceive trade union activities as linked to the subversion and, consequently, regard the members of such organizations as "internal enemy", and partly to the guerrilla groups.

44. The situation in the department of Antioquia, and particularly the region of Urabá, was described to the Special Rapporteurs as particularly serious in this regard. In 1994, 25 trade union leaders have been killed in the department and 16 others in the rest of the country. In 1993, 131 assassinations were said to have taken place. Most killings were imputed to the guerrilla groups. The victims belonged to the trade union representing banana production employees. Many of them were former EPL combatants. According to a study carried out by the Defensor del Pueblo, the killings were motivated by the EPL attempt to gain control over the local branch of the

Sindicato Nacional de Trabajadores de la Industria Agropecuaria (SINTRAINAGRO, National Trade Union of Agricultural Workers), a powerful trade union and a potential source of revenue for the EPL. The means of protection put at the disposal of trade unions by the Government were said to be insufficient. As a consequence, many were said to be forced to leave their areas of residence. Violence against trade unionists continues. Reports of killings and death threats are received on an almost regular basis. One of the most recent cases concerned the killing, on 10 October 1994, of trade union leader Hernando Cuadros, who was abducted from his home in Tibú, Norte de Santander, and killed, allegedly by paramilitary forces.

45. Numerous members of peasant and indigenous organizations have also become victims of violence at the hands of the security forces and private justice and guerrilla groups in the context of land disputes in which they claimed their rights to certain areas, or for their activities aimed at the protection of their identity and organization. Thus, at least 78 indigenous leaders are said to have been killed in the past four years.

46. Since its creation in 1985, as a result of bilateral negotiations between the Government and the FARC, the political party Unión Patriótica (UP) (Patriotic Union) has lost more than 2,000 members, including 1 member of the Senate, 3 deputies of the House of Representatives and a number of mayors and municipal counsellors, as victims of politically motivated killings. A report published in October 1992 by the Defensor del Pueblo 20/ describes how the UP, after gaining considerable support from the population when it first participated in the electoral process in 1996, came to be perceived as a threat by traditional sectors, who saw its gains as an attack on their privileges and the "victory of international communism". 21/ Similarly, the Partido Comunista de Colombia (PCC) (Communist Party of Colombia), was also regarded as an "internal enemy" under the doctrine of "National Security" motivating the military's counterinsurgency efforts. 22/ Those responsible for acts of violence against members of the UP and the PCC are said to be paramilitary groups and hired gunmen in the service of large landowners and drug traffickers, as well as members of the security forces. The killing of leaders and members of these two parties continues. On 9 August 1994, Manuel Cepeda Vargas, Senator for the PCC, was shot dead in Bogota after having received death threats on repeated occasions. 23/ In 1993, the Executive Committee of these two parties denounced the existence of a plan called "coup de grâce" within the command of the armed forces aimed at eliminating their leadership. To date, two of the persons whose names were reported to be on the list of those to be killed have been assassinated: Manuel Cepeda Vargas and José Miller Chacón Penna.

47. The response of the security forces, particularly the DAS, charged with the task of providing protection to citizens at risk, is reported to be insufficient - quite apart from the fact that in a number of cases the security forces themselves, or groups collaborating with them or enjoying their acquiescence, are said to be at the origin of the threats. Not surprisingly, there appears to be reluctance on the part of those under threat to seek the protection of escorts provided by State institutions.

C. "Social cleansing"

48. The elimination of marginalized and impoverished sectors of the population has been a steady phenomenon during the past 15 years, particularly in urban areas of Colombia. After the first such killings in 1979 in the city of Pereira, where a "death squad" killed a number of criminals, this form of violence quickly spread to other cities of Colombia: Medellín and Bogotá in 1980, Cali and other cities in the Cauca valley in 1981, Bucaramanga and other urban areas in the Magdalena Medio region in 1983. Since then, "social cleansing" killings were reported to have occurred in all departments of Colombia. Antioquia, Atlántico, Distrito Capital, Santander and Valle del Cauca were those most affected. According to non-governmental organizations, by 1990 approximately 400 persons per year were victims of this kind of violence, whereas 505 deaths were registered for 1992. These figures, together with other elements, such as the threats that often precede the killings and the modus operandi of the authors, suggest that the phenomenon is not just a casual one.

49. In addition to criminals, persons from other sectors of the population whose presence was considered undesirable became the targets of such killings: prostitutes, homosexuals, beggars, drug consumers and street children. The killings are often preceded by torture, allegedly with the purpose of making it impossible to identify the victim (and therefore to carry out an investigation) and sending an intimidatory message to the above sectors. Several sources expressed their concern to the Special Rapporteurs that, over the years, "social cleansing" had become more and more accepted and acceptable, as a solution to the question of how to deal with marginalized sectors of the population. The qualification "desechables" (disposable) for those regarded as undesirable has gained legitimacy.

50. "Social cleansing" killings are typically carried out by "death squads". Over the years, many different groups have made their appearance in different cities throughout the country. Reportedly, police personnel often participate in "death squads". Sometimes, these groups are said to be organized by shopkeepers of an area with the aim of cleaning their streets of persons whose presence is regarded as a threat. Even where the "death squads" are composed of private gunmen, the police reportedly do not intervene. According to the information received by the Special Rapporteurs, virtually no attempts on the part of the security forces to dismantle or disarm such groups and prosecute their members are known. In a small number of cases, disciplinary proceedings were said to have been opened. In one instance only, such proceedings concluded with the dismissal of 15 police officers and other sanctions against a further 34 policemen, after the Archbishop of Pereira denounced their involvement in "social cleansing" killings in 1991. In other cases, the policemen involved were said to have been transferred to other areas of the country, thus impeding the progress of the disciplinary proceedings.

D. Other factors of violence

51. The overall level of violence in Colombia is very high. Many of the persons whom the Special Rapporteurs met during their visit pointed out that a long history of armed conflicts - civil wars and armed insurgency - and the absence of a functioning State administration in large parts of the country

have created a culture of violence in which the settlement of differences by violent means is a common occurrence. The deficiencies of the administration of justice, but also the inability of the State authorities to ensure security for the civilian population, were said to have been particularly detrimental in this regard.

52. The Special Rapporteurs were informed of some of the initiatives taken by the authorities to decrease the level of violent crime, including attempts at decreasing the number of firearms held by civilians. Projects in several cities aim at analysing the causes of crime in order to target such measures in a more efficient way.

53. However, the persistent economic and social differences and the high level of poverty continue to be an underlying cause of violence and crime. Several observers have pointed out that the benefits derived from steady economic growth and stability have not been employed to resolve the most basic problems of poverty and social exclusion. While 75 per cent of the population are said to fall below the level of poverty and 13 per cent are completely illiterate, public investment in education, health, housing, food and other social programmes is said to be very low. Very high administrative costs and the amount of money spent on military activities are said to reduce public investment in social areas even more. In addition, land continues to be concentrated in the hands of a small number of large landowners.

54. Politically motivated as well as common criminality linked with drug trafficking constitutes a further factor contributing to the climate of violence prevailing in Colombia. Armed groups engaged in drug trafficking are said to be directly responsible for acts of violence in connection with the settlement of disputes. Other drug traffickers, and particularly the drug cartels, finance private armies to preserve their economic interests. The security forces were said to have committed numerous human rights violations against the civilian population in pursuing organizations linked with drug traffickers, similar to the treatment inflicted on suspected members of the armed insurgency. In some instances, however, private forces financed by drug traffickers are said to cooperate with the security forces, particularly where there is a common interest in fighting armed insurgents. The formation of paramilitary groups, sometimes with the participation of military and police personnel, with the aim of combating drug trafficking, was also reported.

III. AREAS VISITED BY THE SPECIAL RAPPORTEURS

55. The following sections contain a brief analysis of the situation in three areas visited by the Special Rapporteurs during their mission: the department of Arauca, the Magdalena Medio region and the department of Valle del Cauca. These areas have not only been the scene of some of the most salient and grave cases of violations of the right to life and physical integrity in the recent past, they may also serve as examples of the interaction of the different actors.

A. Arauca

56. In the department of Arauca, political violence started in the early 1980s, coinciding with the development of the exploitation of oil

reserves. Attracted by the possibility of extracting money from companies engaged in petrol production and the strategically interesting location (between Venezuela and the department of Casanare, the richest in oil reserves), both the FARC and the ELN became active in the department. The response of the security forces consisted in establishing a heavy presence of the military in the areas of armed conflict, with battalions or military bases in almost all municipalities of the Piedemonte Araucano (the eastern part of the department, including the municipalities of Saravena, Tame, Fortul and Arauquita). The Rapporteur on extrajudicial, summary or arbitrary executions, who visited Arauca during the mission, was informed that, since 1989, the armed conflict had intensified, giving rise to an increasing number of violations of human rights and international humanitarian law, whose principal victim had been the civilian population. Continuous control of the region on the part of the security forces through roadblocks and patrolling in rural and urban areas has reportedly created an atmosphere of permanent armed conflict in Arauca. The insurgents, in turn, are reported to control the population through a system of militias and intelligence services, and attacks against installations of the security forces and petrol companies. Thus, Arauca is said to have become one of the most violent departments of Colombia, with entire municipalities constantly living in a climate of terror. According to figures published by the Comisión Andina de Juristas-Seccional Colombiana, 1,115 violent deaths were registered in the department of Arauca for the period from 1989 to 1993, an average of two per day. Between 80 per cent and 90 per cent of these violent deaths are said to have political motives and may be attributed to the three main armed actors in the area: armed insurgents, the armed forces and paramilitary forces said to be cooperating with them. In its annual report for 1993, the Procuradoría General de la Nación listed the department of Arauca among the areas with a preoccupying increase in complaints of abuses by State agents, with a total of 71 registered complaints of human rights violations by State agents in the department, 32 per cent more than in 1992. With 18 complaints brought before the Procuradoría, Saravena is among the 10 municipalities with the highest record of denunciation of such abuses.

57. Most of the violations of human rights and international humanitarian law in Arauca are reported to take place in situations other than armed confrontations. The municipalities of Saravena, Tame and Arauquita are particularly affected. The civilian population in these areas faces constant threat to their lives and physical integrity from both sides. The Special Rapporteur received numerous accounts of abuses by the guerrillas, including killings of members of the security forces or civilian authorities; assassinations of persons accused by the guerrillas as being informers of the security forces; and killings of several women for being girlfriends of police or military personnel. A number of persons abducted by members of the FARC or the ELN in order to obtain ransom payment for their release were also reported to have been killed. In addition, the Special Rapporteur was informed of death threats on the part of the ELN against public officials and journalists and of killings by the ELN of persons violating its moral code by committing theft or adultery, or by consuming drugs.

58. In rural areas, the guerrillas are said to force peasants to provide them with young men and women to fight in their ranks and with food. In turn, the security forces reportedly regard the entire civilian population living in

areas where there is armed insurgency as supporters or even members of guerrilla groups and thus as the enemy. Many reports of human rights violations by the military brought to the attention of the Special Rapporteur refer to the killing of unarmed civilians, either in indiscriminate operations against civilian settlements or in isolated incidents which do not involve armed confrontation. The Special Rapporteur was informed by the civilian authorities in Arauca that guerrillas captured by the security forces or those who surrender voluntarily to them - sometimes reportedly for fear of ajusticiamiento on the part of the insurgents - are used by the military as so-called "agentes de control" for intelligence operations and for the extrajudicial killing of persons implicated with the guerrillas. In many cases, civilian victims of extrajudicial executions are presented to the public as guerrillas killed in combat. The principal victims of such acts are said to be peasants and members of civic associations, particularly trade unions, which are perceived as infiltrated by the insurgents. The Special Rapporteur received numerous accounts of violations of the right to life, including extrajudicial executions and death threats, by members of the security forces against leaders and members of such associations, particularly the teachers' union Asociación de Educadores de Arauca (ASEDAR) (Association of Teachers of Arauca). Cases of forced disappearance and torture, including the rape of women, by members of the security forces were also brought to the attention of the Special Rapporteur.

59. One of the most salient recent cases of human rights violations by members of the security forces was the killing of 10 civilians, mostly fishermen, from the village of Puerto Lleras by soldiers from the Artillery Group No. 19 Revéiz Pizarro of the Colombian Army on 3 January 1994. The massacre was said to have been carried out in reprisal for a guerrilla attack against a military base earlier on the same day, in which three soldiers had died. On 4 January 1994, the armed forces issued a press release informing the public that an armed confrontation had taken place which had led to the death of various persons. However, an investigation by the Procuradoría General de la Nación led to the initiation of judicial proceedings against six officials and three soldiers before Military Penal Court No. 124 in Saravena. To date, no sanction, either disciplinary or penal, is known to have been imposed.

60. During 1993, a paramilitary group emerged in the region of Saravena under the name of "Autodefensas del Sarare". As its members operate using hoods to conceal their faces, it has come to be widely known as "Los Encapuchados". According to the military commanders of the region, they are a self-defence group established by peasants to counter pressure from the insurgents. However, inhabitants of the area told the Special Rapporteur that the "Encapuchados" were actually members of the military. Reportedly, on one occasion when they detained civilians, eye witnesses identified one of them as an official of Artillery Group No. 19 Revéiz Pizarro and two others as civilians, guerrilla ex-combatants who were working with the military in intelligence operations. A few days later, the official recognized by the witnesses was found dead in the barracks, apparently having committed suicide. During his meeting with the military authorities of the department the Special Rapporteur was told by the commander of the Revéiz Pizarro battalion that the "Encapuchados" were a self-defence group and the allegations

concerning them exaggerated propaganda, thus contradicting the civilian authorities, according to which former guerrilla combatants who had turned themselves in to the military were used as members of this group.

B. Magdalena Medio

61. The region known as Magdalena Medio is composed of more than 30 municipalities within the departments of Antioquia, Caldas, Cundinamarca, Bolívar, Boyacá, Santander and Cesar. They include Barrancabermeja, Puerto Wilches, Sabana de Torres, San Vicente de Chucurí and El Carmen in the department of Santander; Yondó in the north-east of Antioquia and San Pablo in the south of Bolívar. Within this region, disputes between peasants and landowners over land rights have been the source of conflict for decades. During the 1960s, the region not only experienced agrarian conflict, but there were also labour disputes involving petroleum workers in Barrancabermeja, mainly organized by the Unión Sindical Obrera. At the same time, insurgent movements emerged, first the ELN and later the FARC, and common criminality increased. This confluence of situations prompted State intervention and it was considered necessary to restore order and eradicate violence by the use of the army. A situation characterized by the existence of a major social and political popular movement, the presence of the army and of guerrillas, and the activities of paramilitary groups, created a situation marked by new levels of violence which still persist. On the other hand, the National Plan of Rehabilitation characterized this region as socially deprived (lack of public services, high levels of unemployment, illiteracy and poor health, large slum areas where displaced people live, etc.).

62. With respect to Barrancabermeja, considered together with Urabá, the third human rights report of the Procuraduría noted that both regions have traditionally been violent and have histories of diverse types of confrontation that have adopted various forms, most of them armed. The level of impunity is extraordinarily high and the incidence of criminality above the national average. However, the institutional response has not resulted in the improvement of the situation, as the high number of complaints received about human rights violations illustrates. In fact, the situation in Barrancabermeja has even worsened, since it is the municipality that, without being the capital of the department, showed the highest number of complaints in 1992 and for 1993 this number practically doubled with respect to the previous year. It might be thought that this increase is due to greater trust in the mechanisms of control of the State over its organs. But unfortunately what it means is that a large State presence, far from improving the situation of violence, results in being one of the factors that contribute to it. Obviously, here reference is made to the State presence that goes beyond principles of law and ethics, and not to the administrative functions per se. 24/

63. Most of the arrests in Barrancabermeja are carried out by Army and Police personnel, including their security and intelligence services. According to a report prepared by several NGOs on torture and arbitrary detention in the region, in a large number of the cases studied the detainees "were taken to the military installations of the Nueva Granada Battalion headquarters in Barrancabermeja and tortured there. Of the total number of reported

detentions, 43 were tortured in the place where they were detained, 94 in the army barracks of the Nueva Granada Battalion, 52 in the Battalion's own installations and 21 were first tortured on military bases and then taken to the Battalion, where the torture continued. Torture was also reported to have occurred in other military and police installations in the jurisdiction" such as those of the Luciano D'Luyer and Calibio Battalions. 25/

64. The existence of guerrilla organizations practising extortion and abduction led to the creation during the 1960s of the so-called "self-defence groups", armed and trained by the armed forces, in whose counterinsurgency campaigns they assisted. These groups are considered as the origin of the paramilitary groups that emerged in the beginning of the 1980s with the appearance of the Muerte a Secuestradores (MAS) (Death to Abductors) and that continue to operate in the region. They appear to be particularly predominant in El Carmen, San Vicente de Chucurí, Puerto Wilches and Sabana de Torres (Santander), in the rural area of San Pablo (south of Bolívar) and in the petroleum areas of El Centro in Barrancabermeja. At the end of 1993, in the surrounding area of Sabana de Torres (Santander), groups known as "motosierras" ("chainsaws") made their presence; they were so named for their use of chainsaws to mutilate the bodies of their victims. In the area of the south of Cesar (San Alberto) and the south of Bolívar (San Pablo, Simiti), some 23 paramilitary groups are said to be active, despite the strong presence of the National Army.

65. In the framework of operations against the guerrillas, the army, at times together with paramilitary groups, has engaged in intimidation, harassment, killings and, in many cases, massacres that in some regions have provoked population displacement. For example, in San Pablo, in the south of Bolívar, in 1993 there were around 50 cases of displacement of families as a result of "rastrillo" ("rake") operations of the 2nd Mobile Brigade.

66. As for the insurgent groups, they continue carrying out abductions and abuses, also against the civilian population. The ELN has been accused of placing mines ("quiebrapatas") that, specially in the rural areas of San Vicente de Chucurí, have resulted in cases of mutilation, including of children. Drug trafficking is also present in the municipalities of La Dorada, Caldas, Puerto Boyacá and Puerto Berrio.

67. It was also reported that common crime has begun to emerge as another element of violence in Barrancabermeja and its zone of influence. In the urban centres, youth gangs engaging in robbery and other crimes have been formed.

C. Valle del Cauca

68. The department of Valle del Cauca, the economic, political and military centre of the south-west of Colombia, presents a complex situation of violence in rural and urban areas. With 1,138 violent deaths, the department ranks third in the statistics published by Justicia y Paz for the year 1993. The Procuradoría General de la Nación received 107 complaints in 1993, 37 per cent less than in 1992. However, during his visit to Cali, the Special Rapporteur on extrajudicial, summary or arbitrary executions was informed that the level of violence has not decreased: during the first six months of 1994,

654 violent deaths were said to have occurred in Cali alone. From July to September, an average of 140 violent deaths per month was reported for Cali. In 80 per cent of these cases, the victims were said to have been killed with firearms. In addition, the Personería (see para. 76 (c) below) had accounted for 877 cases of disappearances up to May 1994. In 415 of these cases, the whereabouts of the missing persons remain unknown.

69. According to the information received, the situation in the department is marked by the predominance of three drug cartels: the Cartel de Cali, the Cartel del Centro del Valle based in the region of Buga/Tuluá, and the Cartel del Norte del Valle, in the area of Cartago/Pereira. In urban areas, drug-related violence, common crime, settling of accounts between private individuals by means of violence and "social cleansing" account for a large number of violent deaths, often involving agents of the security forces. In the rural areas, violations of the right to life and physical integrity take place in the context of the activities of the central and northern cartels; of operations carried out by the security forces cooperating with them, sometimes through paramilitary groups; and of the repression, also sometimes through paramilitary groups of armed insurgents and of those carrying out activities to bring about social and economic change in the area.

70. Armed insurgent groups belonging to the FARC and the ELN are said to be present in the two mountain ranges to the east and the west of the Cauca valley. Even though they are said to be less belligerent that in other regions of Colombia, in zones where they are present the civilian population is reported to live under permanent pressure, as the insurgents oblige them to provide money and food. As a consequence, many peasants prefer to leave these areas.

71. The Special Rapporteur received numerous reports of human rights violations during counterinsurgency operations by the security forces in the department of Valle del Cauca. Such operations have repeatedly resulted in massacres of peasants, who were then presented as guerrillas killed in combat. The Special Rapporteur received testimony concerning the extrajudicial execution, after torture, of 13 peasants belonging to 2 families at Ríofrío by members of the military and the local police. 26/ Some of the victims had reportedly been active in the social civic movement of the municipality. On the day of the events, the military had announced that 13 guerrillas had been killed during an armed confrontation. Despite an investigation carried out by the Procuradoría General de la Nación which established the participation of members of the Palacé Battalion of the Colombian Army in the extrajudicial execution of civilians, nobody is said to have been arrested as yet. The case is reportedly in the preliminary investigation stage before the military judiciary. The surviving members of the victims' families were forced to leave the heavily militarized area out of fear for their lives.

72. The military authorities whom the Special Rapporteur met in Cali stated that the armed insurgents were cooperating with drug traffickers in the department, thus obtaining important financial resources. However, several other sources informed him that close links existed between the military operating in the area and drug traffickers, as well as large landowners in the central and northern parts of the valley - areas suffering from abandon on the part of the departmental authorities in which the enormous social differences

between a small, extremely wealthy and powerful elite and underprivileged peasants and workers are enhanced and perpetuated. Cooperation between the drug traffickers and the military allegedly comprises protection of the installations used for the processing of cocaine and joint operations involving military and paramilitary groups, directed against guerrillas and their suspected supporters in areas of insurgent activities. It was also reported that no efforts have been made on the part of the military to disarm or dismantle private armed groups in the service of drug traffickers and/or landowners. These armed groups are said to be responsible for numerous abuses against the civilian population, particularly in the context of land accumulation for coca growing.

73. The Special Rapporteur received preoccupying reports concerning recent assassinations and threats related to the disappearance and subsequent killing, in 1990, of more than 40 persons in Trujillo, whose bodies were thrown into the river Cauca, bearing marks of torture and mutilation. Investigations into the case established the involvement of agents of the military intelligence service F-2, the DAS, the local and departmental police and military in these killings, which were said to have served the interest of drug traffickers in the area. In July 1994, new cases of disappearance and killings occurred in Trujillo. Some of the victims were relatives of persons killed in 1990. The remaining family members reportedly fled the area after receiving threats from members of the police and persons linked with drug traffickers. The Special Rapporteur was told that these renewed assassinations and threats may be related to proceedings concerning the Trujillo massacre before the Inter-American Commission on Human Rights. In early October 1994, a commission composed of representatives of State institutions and non-governmental organizations was established to clarify the case.

74. Furthermore, the Special Rapporteur was informed of the recent appearance in the central region of the Cauca valley of a paramilitary group operating under the name COLSINGUE (see above, para. 38). According to eye-witnesses, members of COLSINGUE are patrolling the area together with soldiers of the Palacé Battalion. Recent grave violations of the right to life give rise to concern: on 14 August 1994, they were said to have killed two peasants and one landowner of the area labelled as "auxiliaries" of the guerrillas at La Magdalena. On 23 September 1994, two insurgents and two peasants were reportedly killed at Jamundí during an indiscriminate attack by the military while the insurgents were holding a meeting with various inhabitants of the area. The military commanders, on the other hand, told the Special Rapporteur that the only "pseudo-paramilitary" group was a group of gunmen working for a drug trafficker currently detained at the Modelo prison in Bogota.

IV. THE RIGHT TO DUE PROCESS OF LAW

A. Institutions

75. Under the Colombian legal system, the administration of justice in cases of human rights violations is primarily the responsibility of:

(a) The ordinary criminal courts, the Supreme Court of Justice being the highest court. Criminal proceedings are brought by the Fiscalía General

de la Nación (Office of the General Prosecutor), which is responsible, directly or as a result of a complaint or a claim, for investigating offences and bringing charges against suspects in the competent courts and tribunals. To this end, it directs and coordinates the criminal investigations conducted by the national police and other departments provided for by law and ensures the protection of victims, witnesses and parties to the proceedings (art. 250 of the Constitution);

(b) The military criminal courts, i.e. the military appeal courts and the Military Criminal Court, which try offences committed by members of the police and the armed forces on active duty, in accordance with the requirements of the Military Penal Code (art. 221 of the Constitution);

(c) The administrative courts, headed by the Council of State, in cases of compensation for loss or injury suffered by individuals as a result of acts of government officials.

76. Outside the sphere of competence of the judiciary, the Public Ministry, a government monitoring body which is independent of the legislature, the executive and the judiciary, also has jurisdiction for the protection of human rights. It is composed of:

(a) The Procuraduría General de la Nación, which is the highest authority in matters relating to the official conduct of persons in public service; it exercises disciplinary authority, conducts the appropriate investigations and imposes the appropriate penalties (art. 277 of the Constitution). It therefore exercises external disciplinary authority over government institutions, independently of the internal disciplinary authority of each institution. It may refer any evidence it collects to the prosecutors and judges for the purposes of the relevant criminal proceedings.

(b) The Defensor del Pueblo whose duties include that of asserting the right to the remedy of habeas corpus and that of instituting protection proceedings, without prejudice to the right of the persons concerned (art. 282 of the Constitution). Although his work mainly involves prevention, counselling for citizens and public complaints, he may also conduct preliminary investigations in cases brought to his attention, take measures to ensure the production of evidence and arrange for the protection of witnesses, formalities which he may refer to the Procuraduría General de la Nación or the Fiscalía General de la Nación. In this connection, the Defensor del Pueblo informed the Special Rapporteurs that victims and witnesses frequently turned to his office because they saw it as an institution which inspired confidence and guaranteed objectivity so that, with its support, other departments, particularly the Fiscalía General de la Nación, would take measures for the protection of witnesses. He also indicated that, when it came to the attention of his office that a detainee was being tortured, he immediately made an official visit to the place of detention and had thus been able to verify serious cases and make the appropriate recommendations. In some situations, this prompt action, without formalities, was more effective than any other procedure. He also stated that, from January to October 1994, his office had received 138 complaints of murder, 266 of threats and 64 of torture.

(c) The Personeros Municipales, who perform the functions of the Public Ministry in matters within the jurisdiction of the municipal criminal courts and courts of mixed jurisdiction and of the prosecutors assigned to the circuit, municipal and mixed courts (art. 131 A of the Code of Penal Procedure). Like the Defensor del Pueblo, they have no jurisdiction to impose penalties.

B. Problems relating to the functioning of institutions with jurisdiction to impose penalties

77. The first and most serious observation with regard to the administration of justice relates to the weakness of the system, which is reflected in the high rate of impunity. Impunity is both the cause and the consequence of violence and, in particular, of human rights violations. Fear of further violence prevents victims and witnesses from taking legal action, while the absence of effective investigations and penalties leads government officials and other persons to believe that their actions will go unpunished. Moreover, the lack of penalties, particularly for heinous crimes, simply creates a desire for revenge and to take the law into one's own hands. This problem, which has been extensively documented in recent years by non-governmental organizations, is recognized by the authorities themselves, who informed the Special Rapporteurs of the scant results achieved in efforts to combat impunity, despite the progress made in constitutional and legal matters in recent years.

78. There are, nevertheless, differences in levels of impunity between the various institutions. It was pointed out that the highest levels are in the system of criminal justice, both ordinary and military, while the Procuraduría General de la Nación, in relation to its disciplinary functions, and the administrative courts seem to be functioning fairly satisfactorily. With regard to the latter, it was stated that, in 1993, there had been approximately 400 rulings declaring the responsibility of the State for misbehaviour of its agents and involving some 60 million dollars in compensation. Paradoxically, however, acts in connection with which a ruling is made against the State by the administrative courts often go unpunished by the criminal courts.

Ordinary criminal justice

79. As far as the ordinary criminal courts are concerned, some of the causes of impunity are internal and relate to the fact that the legal profession was neglected for years and to the fact that there are so few financial and human resources for handling such a large-scale problem (the 2,300 or so criminal judges in the country are apparently not enough). Despite the significant budgetary effort made since the adoption of the new Constitution, the criminal courts are still rudimentary in comparison with the task they face. Other causes are external and arise because the institutions responsible for the administration of justice are, in the final analysis, part of a society in crisis, where, as has been seen, violence is rampant among different actors who are frequently at odds with each other and may at any time jeopardize the independence of these institutions, which are often their targets.

80. Direct violence against representatives of the judiciary usually takes place in the framework of specific proceedings, mostly criminal, in an effort to ensure that investigations lead nowhere, that arrest warrants are not served or simply that responsibility for offences is not proved. This violence mainly takes the form of death threats and murders (since 1982, about 270 members of the judiciary are reported to have been murdered) and also causes corruption to set in.

81. By way of example, some authorities said that, for the 28,000 violent deaths that occurred in the country during 1992, the criminal justice system produced only 2,717 convictions, i.e. in barely 10 per cent of cases - this when dealing with the most serious of offences.

82. Although impunity affects the entire judicial branch, the greatest problems occur during the investigatory phase, which is the responsibility of the Fiscalía General de la Nación. Because of the high number of crimes committed in the country, its task is particularly difficult. In many parts of the national territory, the victims themselves or witnesses prefer to remain silent for fear of reprisals or react to the violations by moving to another region, thus making the investigator's task considerably more difficult. Successive Governments should have taken decisive measures to confront this situation, instead of permitting that such a high number of crimes go unpunished year after year.

83. The Fiscalía General de la Nación is in charge of coordinating the criminal investigation police, which provide technical support for investigations and is made up of some 18,000 staff distributed among the different divisions assigned functions of this kind. Observers indicated that the assignment of the task of coordination to the Fiscalía General de la Nación was a significant improvement over the situation prior to the adoption of the new Constitution in which each judge conducted his own investigation and coordination was practically non-existent. However, the Fiscal General told the Special Rapporteurs that coordination had not yet been fully achieved. The Ministers of Justice and the Interior also insisted on the need for improving the investigative capacity of the Procuraduría. Non-governmental sources, for their part, criticized the excessively important role assigned to the military forces in criminal investigation activities, since they lacked the independence needed to conduct investigations objectively. In the view of these sources, this function should be performed exclusively by the technical unit of the criminal investigation police division of the Fiscalía General de la Nación.

84. Another issue about which the Special Rapporteurs heard repeated criticism was that of the protection of witnesses. The current Protection Programme for Victims and Witnesses, designed by the Fiscalía General de la Nación, is intended mainly for witnesses whose testimony is important enough to jeopardize criminal organizations. Witnesses in cases of human rights violations, on the contrary, do not always enjoy the advantages of such a programme. Officials at the Administrative Department of Security informed the Special Rapporteurs that their resources were limited and therefore they were not in a position to respond in a positive way to all the requests they received for the protection of persons under threat.

85. Ordinary criminal justice also includes the regional courts, which were formerly called the public order courts and have jurisdiction in proceedings for offences such as terrorism, rebellion and drug trafficking. Non-governmental sources levelled harsh criticism against these courts and their operational procedures, which they considered to undermine due process. In the first place, these categories of offences have been broadly interpreted, resulting in the use of these courts to prosecute not only major criminals, but also activists from peasant, community, labour and similar organizations whose protests, political demonstrations and labour disputes are often characterized as terroristic or supportive of the guerrillas. As far as procedural aspects are concerned, the anonymity of the judges, prosecutors, criminal investigation police officers and even witnesses for the prosecution are still serious obstacles to the exercise of the rights of the defence, despite the reforms introduced in 1993. In this connection, the Fiscal General de la Nación expressed to the Special Rapporteurs his view that there should be supervision of these courts in order to avoid abuses.

86. In the framework of the Regional Justice system, special offices of the Fiscalía assigned to military units were established under emergency legislation which gave judicial police powers to the armed forces. The main function of these fiscalías in practice has been perceived as legitimizing acts, arrests in particular, carried out by the military in the exercise of functions which normally should not be in their competence. The Special Rapporteurs were informed that the decree establishing those powers was declared by the Constitutional Court to be unconstitutional, but that, despite this fact, the military continue to exercise those functions and the fiscalías still exist.

Military criminal justice

87. According to the information received, the military criminal courts hand down harsh sentences for all violations of internal police or armed forces regulations; it was even stated that they were often excessively harsh when members of the rank-and-file were involved. The situation is quite different, however, in cases in which the offences in question are against civilians (robbery, injury, murder, etc.) and a high percentage of them end in the suspension of the proceedings. While, in the first instance, the military itself has an interest in seeing the culprits punished and it is therefore easier to collect evidence, in the second, cover-ups, partiality and pressuring of witnesses appear to be standard practice.

88. According to a study conducted by the Procuraduría General de la Nación, of 7,903 judgements handed down from early 1992 to mid-1994 by the Higher Military Court, 4,304 were convictions and 4,103 of those were for violations of internal regulations. However, there was a significant number of acquittals and suspensions of proceedings for non-military offences, i.e. offences against the civilian population.

89. Another disturbing aspect of these courts is the fact that they are composed of officers who can also be responsible for ordering military operations in connection with which human rights violations have occurred - something that is contrary to the principle of the independence and impartiality of military judges and is a cause of impunity.

90. Another highly controversial concept is that of an offence committed while on duty, which is used in certain cases to grant jurisdiction to the military courts. Article 221 of the Constitution states that "Offences committed by members of the armed forces on active duty, in connection with that duty, shall be heard by military appeal courts or military tribunals, in accordance with the provisions of the Military Penal Code". This concept has been and is interpreted broadly, to the point of including human rights violations. In addition, when non-military offences occur during military operations, offences against unarmed civilians are dealt with as part of the violation of internal regulations, on the basis of the argument that an act committed while on duty includes anything that a member of the armed forces may do while in uniform.

91. It was also stated that, when a member of the armed forces is involved in an investigation being conducted by the Fiscalía General de la Nación, the military courts demand to be granted jurisdiction; conflicts of jurisdiction, which were formerly settled by the Supreme Court, are settled under the new Constitution by a chamber of the Consejo Superior de la Judicatura, (Superior Council of the Judicature), which is elected by the Congress, with the decision usually being in favour of the military courts. The Fiscal General de la Nación expressed to the Special Rapporteurs his concern about this practice.

92. In connection with this problem, the Procuraduría General de la Nación states in its third report on human rights:

> "The military criminal courts have shown little effectiveness in trying and convicting members of the State defence and security bodies who are responsible for human rights violations. At the same time, the investigatory difficulties raised for the Procuraduría General de la Nación by proceedings in which the national police and the armed forces are involved cause excessive delays in disciplinary decisions. As noted on earlier occasions, the poorly understood concept of 'esprit de corps' leads to cover-ups, obstructs investigations, impedes the entire process and ultimately prevents justice from being done. In addition, in more than a few cases, the military criminal courts' decisions are in open contradiction with those of the Procuraduría General de la Nación, and this robs the disciplinary penalty of much of its value as a deterrent. The monitoring of the military criminal courts by the Public Ministry has not been sufficient to prevent these defects. What is needed is a thorough reorganization of the way in which the members of the armed forces are tried." 27/

The Procuraduría General de la Nación stresses that:

> "Concepts such as military jurisdiction, act committed while on duty and due obedience should be rethought in the light of the principles and values of the Colombian Constitution, which is based on respect for human rights. It should be made perfectly clear that these categories protect the members of the armed forces only on an exceptional basis. It is a mistake to interpret them by analogy, in such a way as to make them applicable to actions not directly connected with police or military duty." 28/

93. In this connection, the Inter-American Commission on Human Rights, in its second report on Colombia, indicated that the risks involved in the existence of military jurisdiction "can be overcome with appropriate regulations for controlling any potential excesses in its use". To that end, it recommends that such regulations should explicitly exclude acts of torture, extrajudicial executions and enforced disappearances and that military judgements should be brought into line with those of the ordinary courts. In this connection, a significant step was taken in June 1994 with the adoption by the Congress of a bill on enforced disappearances, which stated that government officials involved in acts of this kind would not be tried by military courts and that due obedience could not be invoked to relieve them of responsibility. However, President Gaviria's Government objected to these two provisions, stating that they were unconstitutional. The present Government supported the first objection regarding military jurisdiction, arguing that this question should be decided by the judges on a case by case basis. It opposed President Gaviria's objection regarding the defence of due obedience. The Senate, however, did not follow the recommendation made by the current Government and accepted the objections put forward by the former President. At the time the present report was finalized, the bill was under consideration by the House of Representatives.

94. The Procurador General indicated the following aspects as being essential in any review of the Military Penal Code: making the judiciary more professional by separating military judges from the chain of command and from any operational responsibility; adopting the accusatory system of prosecution, through the use of military prosecutors; redefining the concepts of "act committed while on duty" and "superior orders"; making the institution of the parte civil part of military criminal proceedings; ensuring participation by the Public Ministry in the military system of justice; and the use of technical legal defence procedures for members of the armed forces being tried by the military courts. As for the Fiscal General de la Nación, he told the Special Rapporteurs that he was in favour, in particular, of an accusatory system of prosecution, as well as of having a clear definition of "military crimes". Members of the high military command, however, expressed their opposition to a reform of the Military Penal Code along these lines and found it particularly inappropriate to have judges who were independent of the chain of command.

95. Governmental and non-governmental sources said that the problems surrounding the military courts were an issue that created strong tensions in the country and that any suggestions whatsoever, even from official bodies, that military jurisdiction should be limited were met with charges that the military was being attacked and rebellion being encouraged.

Disciplinary authority of the Procuraduría General de la Nación

96. In its third report on human rights, the Procuraduría General de la Nación notes that, in 1993, it received a total of 363 complaints of murder, 234 of disappearances, 227 of torture, 416 of injury, 175 of threats, 87 of ill-treatment, 12 of killings during confrontations and 2 of killings of poor people. Complaints of murder and torture increased by 18.2 per cent and 23.8 per cent, respectively, compared to 1992. With regard to decisions taken in 1993 (mostly referring, naturally, to complaints filed in 1992), the

Procuraduría General de la Nación adopted 524 relating to human rights, each of which involved an average of 4 public officials. Fifteen decisions related to massacres, 56 to murders, 43 to torture and 12 to threats. Of these, there were 21 convictions for murder, 16 for torture and 4 for threats. 29/ While in 1992 there were more than two acquittals for each conviction, in 1993, there was barely more than one acquittal for each conviction. 30/

97. According to the same report of the Procuraduría General de la Nación,

> "The decisions taken in 1993 mostly involve staff at the operational level, who, in turn, are the subject of most of the complaints of violations ... It is precisely at the operational level that there is the greatest contact with the community and, therefore, the greatest opportunity for assault and identification by the victims. It should be noted that the managerial level, which was the highest one considered by the Procuraduría General de la Nación, was the next highest in number of decisions, whence it may be inferred that, while the actual commission of the act is punished, the order to commit it is also given strict and careful treatment by the Fiscalía General de la Nación whenever there is a possibility of investigating it." 31/

98. Like the Fiscalía General de la Nación, the Procuraduría General de la Nación encounters its greatest difficulties at the stage of collecting evidence; many of the incidents occur in the countryside, in remote areas, and evidence is frequently concealed or attempts made to divert the investigation. The Special Investigations Office investigates approximately 30 per cent of the complaints received; the remainder are investigated through the regional and departmental offices, which, according to the Procurador Delegado para los Derechos Humanos, are much less effective.

99. As for the quashing of cases, the Procuraduría General de la Nación notes that the most frequent ground is res judicata:

> "Quite frequently, when the armed forces are apprised of acts that would lead to a disciplinary penalty for some of its members, they hurry to try the case and hand down a favourable decision, which prevents the Procuraduría General de la Nación from continuing its work on the same case: once the armed forces' internal monitoring mechanism has handed down a ruling, it enjoys the privilege of res judicata. When dealing with judgements by this body, the Procuraduría General de la Nación may request reviews, but it cannot hand down another ruling. This means that, although the armed forces' internal monitoring mechanism acts more quickly than the Procuraduría General de la Nación, its handling of cases, which has proved to be permissive and inefficient, ultimately prevents the Procuraduría General de la Nación from rendering justice." 32/

100. With regard to the implementation of its decisions, the Procuraduría General de la Nación requests the authority that appointed the staff member in question to enforce the penalty within a 10-day period, subject to penalty. According to the Procurador General, in practice the implementation of a disturbing number of decisions is delayed for six months to a year, but the great majority are implemented.

101. When they saw the Special Rapporteurs, the Procurador General and his deputies also stressed the need to deal with the lack of internal disciplinary control within the armed forces. This would require:

> "a decision, without waiting for the conclusion of investigations by the Procuraduría General de la Nación, the ordinary criminal courts or the military courts, to dismiss from military or police duty any senior or junior officers, soldiers or policemen against whom there is serious evidence of human rights violations ... The Procuraduría General de la Nación wonders why, when substantiated charges are made of ill-treatment or atrocities against citizens, the top brass does not show the same conscientiousness, strictness and diligence as it does whenever one of the rank-and-file becomes involved in administrative corruption scandals or complicity with organized crime. It would be highly desirable for the lack of official discipline affecting the lives and freedoms of the person concerned to be controlled or punished at the source, in an exemplary manner, without taking the easy way out by invoking the lack of external or judicial disciplinary penalties, which are usually slow to materialize and sometimes never even do". 33/

As for the human rights offices recently established in the military and police barracks as a system of internal control, non-governmental organizations criticized their lack of capacity to investigate abuses against detainees.

102. Non-governmental organizations and personeros also expressed concern about the fact that complaints of torture, summary executions or disappearances received by them or the Procuradurías regionales have to be transmitted to the Procuraduría General in Bogota, which only then requests the regional office to carry out the investigation. This creates major delays and obstacles in the process of gathering evidence.

V. CONCLUSIONS

103. Colombian society is beset by criminality and violence. Over the past few years, this problem has not diminished, despite the numerous legislative reforms and initiatives described in this report. Each year, 28,000 to 30,000 murders are committed. The perpetrators are armed groups in the service of drug traffickers and private landowners; paramilitary organizations allegedly linked to the security forces; "death squads", sometimes including off-duty police, killing people suspected of criminality or otherwise considered as "disposable"; the armed forces and police themselves, who kill suspected guerrillas and civilians perceived as supporting them; guerrillas who kill members of the security forces, members of opposing factions, those who refuse to continue the armed insurgency or to continue to belong to an insurgent group and sometimes civilians; and ordinary criminals.

104. Most of the torture, which is widespread, is said to be used by the security forces, and by paramilitary and other armed groups working in parallel with them, if not as a direct part of their campaigns. Torture may be used to extract information or confessions or to terrorize. It may occur before the victims are killed or are subjected to enforced disappearance.

105. While the institutional political structure is highly centralized, there are sizeable parts of the country where the central Government's writ barely applies. This may be because the area is mainly controlled by insurgent forces or because, in the absence of a specific legal framework for the actions of the State's own forces in the areas referred to as zonas rojas, these forces are accustomed to having a free hand. Further, elements of the security forces are commonly considered to have formed alliances with (if not to have been subverted or corrupted by) drug trafficking organizations and paramilitary groups, some of which the armed forces set up themselves. Alliances between drug trafficking organizations and insurgent groups were also reported.

106. Human rights violations are frequent in the context of operations of the security forces directed against the armed insurgency or drug traffickers. The Special Rapporteurs fully understand the difficulties faced by the Government when confronted with guerrillas and other armed groups, both responsible for numerous acts of violence and clearly lacking respect for the lives and physical integrity of state agents and civilians. However, this does not justify excessive and arbitrary use of force on the part of the security forces. There is no excuse for extrajudicial, summary or arbitrary executions or torture, nor for their perpetuation through impunity.

107. Yet, the impunity enjoyed by human rights violators in Colombia is almost total. The military judiciary claims, and generally obtains, competence to deal with cases involving security forces personnel accused of human rights violations. The military justice system can be tough and effective in prosecuting and punishing disciplinary offences involving manifest disobedience of orders. But it has proved itself equally effective in guaranteeing impunity for violations of the ordinary criminal law in respect of acts (murder, torture, kidnapping) committed in the line of duty. Thus, Colombia clearly fails to fulfil its obligation under international law to carry out exhaustive and impartial investigations with a view to identifying those responsible, bringing them to justice and punishing them. 34/ Although in a number of cases, administrative tribunals have granted compensation to victims or their families for damages suffered at the hands of state agents, the tribunals conducting criminal proceedings against the same agents do not find grounds for their conviction. This strongly suggests the lack of institutional willingness to hold the authors of human rights violations responsible.

108. Those in favour of military jurisdiction over human rights violations committed by members of the security forces have based their argument on the interpretation of acts committed "in connection with" military service, as contained in article 221 of the Constitution. The Special Rapporteurs wish to express their concern at the fact that the Constitution, which refers to respect for human dignity and human rights among its fundamental principles, is interpreted in a way that continues to allow for virtually total impunity. Furthermore, the fact that the members of the chamber of the Superior Council of the Judicature that decides in cases of conflict of competence are elected by Congress is not easily reconcilable with the fundamental principle of independence of the judiciary from the legislature.

109. While considering it inappropriate to affirm the existence of a planned policy of "systematic violation" of human rights, the Procuraduría General, in its third report on human rights, stated nevertheless that the violations had been so numerous, frequent and serious over the years that they could not be dealt with as if they were just isolated or individual cases of misbehaviour by middle- and lower-rank officers, without attaching any political responsibility to the civilian and military hierarchy. On the contrary, even if no decision had been taken in the sense of persecuting the unarmed civilian population, the Government and the high military command were still responsible for the actions and omissions of their subordinates.

110. The Special Rapporteurs remain concerned at the contrast between statements indicating high sensitivity to and awareness of human rights issues at the top level of the armed forces and their practices in the field, which very often fail to respect human rights. Indeed, despite clear international obligations to the contrary, responsibility for such acts is vitiated by the availability of the defence of obedience to superior orders. This has recently been affirmed by the legislature, a majority of whose members, like the previous President, insisted that "superior orders" can be a full defence for involvement in enforced disappearance, in utter disregard of the relevant international standards. 35/

111. The perception of the failure of the State to exercise effective control and provide security, which is shared by high government officials, is aggravated by the continuing wide gap between the wealthy, property-owning few and the landless, unemployed or low-paid many in a country that is manifestly rich in natural resources, economic activity and human potential. Indeed, these are the conditions that have nourished the left-wing insurgency and allowed some drug-traffickers to pose as modern Robin Hoods.

112. It will only be possible for the State to reassert itself effectively, that is, with the respect and support of the population, if it can reform itself in that area that is central to the legitimacy of any State, namely, the establishment of the rule of law. Of course, this cannot be done in a vacuum. There need to be serious attempts to pacify the country, not just by a discredited military using criminal counterinsurgency techniques, but also by seeking a political accommodation. The Special Rapporteurs welcome the efforts made by the new administration with a view to ending the ongoing armed conflict through negotiations with the insurgent groups that are still active. The importance of peace for the enjoyment of human rights in areas of guerrilla activities and military counterinsurgency operations cannot be overemphasized.

113. The present administration has acknowledged the existence of these problems and repeatedly declared its commitment to act on them. Both the analysis and the statement of commitment are to be found in the new President's campaign statements, his inaugural address and his National Human Rights Day statement. The commitment was reaffirmed directly to the Special Rapporteurs by the President himself and several of his Ministers, in particular those of Defence and the Interior.

114. This is not the first time that a peace process has been initiated. The measure of commitment to respect for human rights, however, is the way and the

extent to which statements and declarations are put into practice. The recommendations that follow are aimed at reinforcing and supporting the efforts of the Colombian Government to translate the commitment into reality. Particular emphasis is laid on measures that could contribute to the prevention of further human rights violations.

VI. RECOMMENDATIONS

115. While initiatives to raise awareness of human rights among members of the security forces and the population in general through educational and other measures are to be welcomed as a necessary step, the Special Rapporteurs wish to emphasize that respect for, and thus enjoyment of, human rights, can only be improved if impunity is effectively fought. The Special Rapporteurs call on the Government to fulfil its obligation under international law to conduct exhaustive and impartial investigations into all allegations of extrajudicial, summary or arbitrary executions and torture, to identify, prosecute and punish those responsible, grant adequate compensation to the victims or their families and take all appropriate measures to prevent the recurrence of such acts.

116. The present system of military justice ensures impunity for acts such as summary execution, torture and enforced disappearance. The United Nations General Assembly, in its Declaration on the Protection of All Persons from Enforced Disappearance (resolution 47/133 of 18 December 1992), stipulated that persons alleged to have committed acts of enforced disappearance should be tried only by the competent ordinary courts, and not by any other special tribunal, in particular military courts (art. 16.2). The Special Rapporteurs are of the opinion that this should apply equally to extrajudicial, summary or arbitrary executions and torture. Therefore, the only appropriate step would be to remove such acts from the ambit of military justice. This should be clearly spelled out in the law.

117. The civilian justice system, however, is not functioning properly either. The ordinary courts prosecute to conviction in only about one tenth of all cases of murder. The Special Rapporteurs therefore call on the authorities to take the necessary steps with a view to strengthening the ordinary justice system so as to make it more efficient in all circumstances, thus making unnecessary the use of special justice systems, such as the Regional Justice System. The following may be recommended to this effect:

(a) Allocation of the necessary human and material resources, especially at the investigative stages of judicial proceedings. Judicial police functions should be carried out exclusively by a civilian entity, namely the technical unit of the criminal investigation police. This would allow the independence of investigations and constitute an important improvement in the access to justice for victims of and witnesses to human rights violations, who, at present, very often see their complaints being investigated by the very institutions they accuse of being responsible for these violations.

(b) The provincial and departmental offices of the Procuraduría should be given sufficient autonomy and resources to carry out prompt and effective investigations into alleged human rights violations.

(c) As long as the Regional Justice System exists, the crimes falling under this jurisdiction should be clearly defined so as to avoid acts which constitute a legitimate exercise of political dissent and social protest being considered as "terrorism" or "rebellion". Furthermore, defendants before regional courts must enjoy full respect for their right to a fair trial. The severe restrictions currently in place, including those affecting the right to habeas corpus, a procedure essential for protecting people deprived of their liberty from torture, disappearance or summary execution, should be eliminated.

(d) Effective protection should be provided for all members of the judiciary and the Public Ministry from threats and attempts on their lives and physical integrity, and investigations into such threats and attempts should be carried out with a view to determining their origin and opening criminal and/or disciplinary proceedings, as appropriate.

(e) Likewise, provision should be made for effective protection of persons providing testimony in proceedings involving human rights violations, as appropriate.

118. The excavation, exhumation and evaluation by experts in the forensic sciences of remains which may belong to victims of extrajudicial, summary or arbitrary executions are an integral part of the obligation to conduct thorough investigations referred to above. They must be carried out in accordance with the highest standards of expertise by specialists in forensic archaeology, anthropology, pathology and biology. In this context, the Special Rapporteurs wish to refer to the Model Protocol for Disinterment and Analysis of Skeletal Remains, included in the Manual for the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (ST/CSDHA/12 and Corr.1), a document disseminated by the Crime Prevention and Criminal Justice Branch of the United Nations Centre for Social Development and Humanitarian Affairs. The Special Rapporteurs call on the Government to ensure that the necessary forensic expertise and ballistic analysis are made available throughout the country with a view to obtaining maximum evidence in each case under investigation.

119. In addition, the system of special offices of the Fiscalía assigned to military units has been seen by many observers as effectively providing a colour of legitimacy to cover acts by the armed forces intended to ensure that those they capture and seek to have prosecuted are successfully convicted in the so-called regional tribunals that operate with anonymous judges and official witnesses. As stated above, and on the basis of the decision by the Constitutional Court referred to in paragraph 86 above, these acts, which include arrests and gathering of evidence for prosecution, should be carried out exclusively by civilian judicial police, in which case there would be no need for these special offices to continue functioning.

120. As for the military justice system, measures must be taken in order to ensure its conformity with the standards of independence, impartiality and competence required by the pertinent international instruments. Due regard should be given, in particular, to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan from

26 August to 6 September 1985, and endorsed by the General Assembly in resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. Thus, an important step forward would be a substantial reform of the code of military justice, along the lines suggested, inter alia, by the Procuraduría General. These reforms would need to include the following elements:

(a) Clear distinction between those carrying out operational activities and personnel involved in the military judiciary, who should not be part of the normal chain of command;

(b) Recomposition of the military tribunals by a corps of legally trained judges;

(c) Ensuring that those responsible for the investigation and prosecution of cases are also entirely independent of the normal military hierarchy and professionally qualified, if not indeed a specialized branch of the Fiscalía. They should be given sufficient human and material resources to fulfil their functions;

(d) Removal of the defence of obedience to superior orders in respect of crimes under international law such as extrajudicial, summary or arbitrary executions, torture and enforced disappearances;

(e) Giving full effect to the recent Constitutional Court decision requiring involvement of the parte civil; and

(f) Explicitly excluding from military jurisdiction the crimes of extrajudicial, summary or arbitrary execution, torture and enforced disappearance.

Furthermore, the organ deciding in conflicts of competence between the civilian and the military justice systems should be composed of independent, impartial and competent judges.

121. Even if such reforms are speedily implemented, the backlog of historical impunity will remain and must be addressed. The Special Rapporteurs would consider opportune the establishment of a mechanism which could contribute to providing justice for the past. Such a mechanism should be able to achieve the following goals:

(a) Give a full public accounting of the scope and extent of the crimes committed in the name of the State and the political and institutional factors that contributed to the impunity of their authors;

(b) Formally identify the individual responsibility for such crimes, including the direct perpetrators and those who may have given the explicit or implicit orders for their commission;

(c) Instigate the corresponding criminal and disciplinary proceedings, to be carried out by the competent organs;

(d) Ensure effective reparation to the victims or their dependants, including adequate compensation and measures for their rehabilitation;

(e) Make recommendations that would help to prevent further violations in the future.

122. The Government already has powers, through its control of appointments, promotions and discharges from service, to make clear that it will not tolerate criminality by its own forces. The chain-of-command responsibility is such that, having recognized the existence of the problem, it is in a position to identify where formal responsibility lies and avail itself of its powers accordingly. In some isolated cases, the Government has, in the past, decided to discharge from service agents involved in human rights abuses. The power to do so is enshrined in article 189 of the Constitution. Its exercise, however, is independent from any other disciplinary sanctions and from the criminal procedures to be opened in such cases in compliance with the aforementioned international obligation to investigate, prosecute and punish those found responsible, grant adequate compensation and prevent the recurrence of human rights violations. In any event, members of the security forces should be suspended from active duty when a formal disciplinary or criminal investigation in cases involving human rights violations has been opened against them by the Procuraduría General de la Nación or the Fiscalía General de la Nación. In addition, respect for human rights should be among the criteria applied when evaluating the conduct of security forces personnel with a view to promotion.

123. Counterinsurgency operations by the armed forces must be carried out in full respect for the rights of the civilian population. The Special Rapporteurs call on the authorities to ensure that the anonymity of military personnel does not facilitate impunity when they commit illegal acts.

124. The armed forces must be required to accept as a priority the taking of effective action to disarm and dismantle armed groups, especially paramilitary groups, many of which they have set up and/or cooperated closely with. Given the numerous abuses committed by such groups, as well as their illegal character, this is an imperative necessity. Furthermore, it would do much to establish the credentials of the armed forces as impartial upholders of the rule of law. It would also begin to make a reality of any democratic State's need to have a monopoly of the use of force, within the limits established in the pertinent international standards.

125. The Special Rapporteurs also recommend that efforts to disarm the civilian population be intensified and their efficiency increased. Strict control of weapons in the possession of civilians would be an important measure with a view to lowering the level of common crime and violence in Colombia.

126. In the light of the tendency of the armed forces in the field to consider human rights activism, trade unionism and the activities of civic organizations aimed at improving social and economic conditions, particularly of the rural and indigenous population, as supporting the insurgency, it is essential that the highest political and military authorities reaffirm that such activities are legitimate and necessary. Indeed, the State is threatened by those who violate human rights not those who denounce the violations. Public statements to this effect could help to create a climate more conducive to the exercise of such activities.

127. While the Special Rapporteurs acknowledge that effective protection of all those at risk of human rights violations is extremely resource-intensive, they are obliged to recommend that substantially increased measures of protection be afforded to certain vulnerable sectors, such as threatened human rights groups, displaced persons, street children, trade unionists and indigenous groups. Those at risk should be consulted with a view to determining the most appropriate measures for each case. Such measures could include the extension of existing witness protection programmes or the financing of security personnel selected by the person under threat. The Special Rapporteurs believe that foreign resources already available should be used in this area. In the case of persons who have received threats, especially death threats, in addition to the measures of protection a proper investigation should be carried out in order to determine the origin of the threats and to initiate proceedings against their authors, in compliance with the pertinent international instruments.

128. The Special Rapporteurs acknowledge that if peace could be achieved, this would create the most favourable circumstances for improving the human rights situation in Colombia. They therefore urge all the parties to the armed conflict seriously to seek and negotiate a peaceful solution to the conflict and, to the extent that the parties would find this helpful, suggest that the United Nations would be willing to assist in this process. No such peace agreement should create obstacles to providing justice for the victims of human rights violations within the mandates of the Special Rapporteurs. Adequate provision should be made for the protection of all those who have laid down their arms and are willing to reinsert themselves into civilian life and, particularly, for former combatants who organize themselves in political movements to participate in the democratic process without fear of suffering reprisals.

129. The recent decision by Congress to ratify Protocol II additional to the four Geneva Conventions of 12 August 1949 has assumed a symbolic significance in efforts to humanize the armed conflict between governmental forces and insurgent groups. The Special Rapporteurs welcome this step and appeal to all parties to the conflict to comply with the provisions of that Protocol, including those prohibiting acts within the mandates of the Special Rapporteurs.

130. The Special Rapporteurs also appeal to the authorities to adopt measures to protect those at risk of "social cleansing" killings, in particular street children. Such measures could include assistance and education programmes, as well as support for initiatives taken by the marginalized sectors themselves.

131. The level of violence, both politically motivated and due to common crime, has risen steadily in the recent past and has reached alarming proportions, despite legislative reforms and other initiatives taken by the successive administrations. The vast majority of recommendations made by the representatives of various United Nations human rights mechanisms that visited Colombia in 1987, 1988 and 1989 have not been implemented. Military jurisdiction over human rights violations committed by members of the armed forces continues. The current Government recognizes the gravity of the human rights situation, has identified its causes, in particular impunity, and has repeatedly expressed its willingness to take radical measures to redress the

situation. It is clear that the Government will encounter resistance from various powerful quarters defending their interests. The Special Rapporteurs believe that the international community should support the Government's efforts to translate its expressed political willingness into practice. The advisory services and technical assistance programme of the Centre for Human Rights, under the guidance of the High Commissioner for Human Rights, should consider any request from the Government of Colombia to help it to put the above recommendations into effect. The involvement in this process of the United Nations Development Programme (which already provides assistance to the Government on human rights issues) would be welcome. In this context, the Special Rapporteurs wish to emphasize the importance of the role of non-governmental human rights organizations and the need to strengthen them and provide them with adequate protection. Their participation in human rights assistance programmes is essential.

132. The Commission on Human Rights should keep the human rights situation in Colombia under particular close scrutiny, with a view to the appointment, unless the situation improves radically in the near future, of a Special Rapporteur who could ensure permanent monitoring of and reporting on the human rights situation and who could cooperate closely with the technical assistance programme.

Notes

1/ See the report of the Special Rapporteur, Mr. P. Kooijmans (E/CN.4/1988/17/Add.1, paras. 8-12).

2/ E/CN.4/1989/18/Add.1.

3/ "Paramilitarism" is a term widely used to refer to the activities of the groups described in paragraphs 36-40. The authorities, however, including the President of the Republic, more often refer to them as "private justice groups".

4/ E/CN.4/1990/22/Add.1, paragraph 5.

5/ The denomination "militias" is used for armed wings of the guerrilla groups operating mainly in urban areas.

6/ During their mission, the Special Rapporteurs were repeatedly told that incidents of torture were often not denounced, particularly when preceding enforced disappearances or extrajudicial, summary or arbitrary executions. It may therefore be presumed that its incidence is much higher than the figures published by Justicia y Paz.

7/ See report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1995/36), paragraphs 126-136.

8/ See reports of the Special Rapporteur on summary or arbitrary executions (E/CN.4/1993/46, paras. 185-215 and E/CN.4/1994/7, paras. 220-238), as well as of the Special Rapporteur on the question of torture (E/CN.4/1993/26, paras. 112-116 and E/CN.4/1994/31, paras. 173-188).

9/ The Special Rapporteurs were informed that the denomination "zona roja" is not a legal qualification but is simply used in practice by the security forces for areas of armed confrontation.

10/ See paragraph 42 below.

11/ Procuraduría General de la Nación, III Informe sobre Derechos Humanos, p. 47.

12/ "Torture and arbitrary detention in Barrancabermeja and the surrounding area", August 1994, pp. 7 and 9.

13/ Ibid., pp. 14-15.

14/ Ibid., pp. 15-16.

15/ Ibid., p. 21.

16/ The Procuraduría referred to this practice as the "unfortunate custom of the mobile brigades of the National Army", third report, p. 18.

17/ Legislative initiatives to combat paramilitarism under the Government of President Virgilio Barco also include Decrees No. 813/1988 and 814/1988, which established an advisory commission and a special force of 1,000 men to combat paramilitary groups, respectively. In addition, Decree No. 1194/89 provided for the punishment of those who promote, finance, train or take part in hired assassination (paramilitary) groups.

18/ On the question of displacement see the report of the Representative of the Secretary-General, Mr. Francis Deng (E/CN.4/1995/50/Add.1) of 3 October 1994.

19/ The "sufragio", a piece of paper notifying the death of a person, has been used repeatedly to convey death threats.

20/ Jaime Córdoba Triviño: Informe para el Gobierno, el Congreso y el Procurador General de la Nación. Estudio de casos de homicidio de miembros de la Unión Patriótica y Esperanza, Paz y Libertad, October 1992.

21/ Ibid., p. 65.

22/ An instruction manual for the Armed Forces entitled "Know our enemy", produced by the Escuela Militar de Cadetes General José María Córdova in December 1985, includes the Communist Party of Colombia, which has been

legal since 1957, among the enemies of the military, alongside the FARC, the ELN and other armed insurgency groups. A number of non-governmental organizations, including human rights organizations, are listed in the same manual as Communist "front organizations".

23/ The Special Rapporteur on extrajudicial, summary or arbitrary executions addressed an urgent appeal to the Government of Colombia upon receiving notice of the killing of Manuel Cepeda Vargas, calling on the authorities to conduct an investigation into the case to identify those responsible and bring them to justice. The Special Rapporteur reiterated his appeal to the Government, expressed in several urgent communications during 1993 and 1994, to take all necessary steps to provide effective protection to UP and PCC members (see E/CN.4/1995/61, chap. IV, section on Colombia).

24/ Op. cit. (note 11), p. 28.

25/ Op. cit., p. 9.

26/ The Special Rapporteur on extrajudicial, summary or arbitrary executions transmitted the case to the Government of Colombia on 3 June 1994, according to the procedures established for his mandate (see E/CN.4/1995/61, para. 104).

27/ Procuraduría General de la Nación, Op. cit., note 11, pp. 17-18.

28/ Ibid., p. 73.

29/ Ibid., p. 32.

30/ Ibid., p. 34.

31/ Ibid., pp. 34 and 36.

32/ Ibid., p. 36.

33/ Statement by the Procurador General on National Human Rights Day, 9 September 1994.

34/ With regard to extrajudicial, summary or arbitrary executions and torture, this obligation is contained in, inter alia, the Universal Declaration of Human Rights (art. 8); the International Covenant on Civil and Political Rights (art. 2.3); the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, (Economic and Social Council resolution 1989/65 of 24 May 1989); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, (General Assembly resolution 43/173 of 9 December 1988 (Principle 7)); the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations

Congress on the Prevention of Crime and the Treatment of Offenders, held at Havana from 27 August to 7 September 1990 (arts. 7 and 22-26); the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, (General Assembly resolution 40/34 of 29 November 1985).

35/ See article 2, paragraph 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 6, paragraph 1 of the Declaration on the Protection of All Persons from Enforced Disappearance; Principle 3 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions; and Principle 26 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.